

DECISION DOCUMENT
PREAUTHORIZATION OF A CERCLA SECTION 111(a) CLAIM

OLD SOUTHTON LANDFILL SUPERFUND SITE
SOUTHTON, CONNECTICUT

I. **STATEMENT OF AUTHORITY**

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9611, authorizes the reimbursement of response costs incurred in carrying out the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (NCP). Section 112 of CERCLA, 42 U.S.C. § 9612 directs the President to establish the forms and procedures for filing claims against the Hazardous Substance Superfund (Superfund or Fund). Executive Order 12580 (52 Fed Reg. 2923, January 29, 1987) delegates to the Administrator of the Environmental Protection Agency (EPA) the responsibility for CERCLA claims and for establishing forms and procedures for such claims. The forms and procedures can be found in the Response Claims Procedures for the Hazardous Substance Superfund, 40 C.F.R. Part 307, 58 Fed. Reg. 5460 (January 21, 1993). Executive Order 12580 also delegates to the EPA Administrator the authority to reach settlements pursuant to Section 122(b) of CERCLA, 42 U.S.C. § 9622(b). The Director of the Office of Emergency and Remedial Response (OERR) is delegated authority to evaluate and make determinations regarding claims (EPA Delegation 14-9, September 13, 1987 and EPA Redefinition 14-9 "Claims Asserted Against the Fund," May 25, 1988).

II. **BACKGROUND ON THE SITE**

On September 22, 1994, the EPA Regional Administrator for Region I signed the Record of Decision (ROD) for the Old Southington Landfill Superfund Site (hereinafter referred to as the Site). The ROD provides for acquisition of properties located on the Site; removal of all residential and commercial structures from the landfill; relocation of affected residents and businesses located on the Site; excavation and consolidation of discrete semi-solid materials including a two foot buffer zone around these materials in semi-solid disposal area 1 (SSDA1) into a lined cell on Site; installation of a single layer cap on the northern portion of the Site; installation of a multi-layer cap on the southern portion of the Site; installation of a landfill gas collection system and potentially a treatment system; long-term monitoring for groundwater, landfill gas, surface water and sediment; five year reviews; supplemental groundwater studies; such institutional controls as are necessary for implementation of the remedial action set forth in the ROD; and operation and maintenance of the cap and gas collection/treatment system.

In January 1994, EPA issued special notice letters to United Technologies Corp., Pratt & Whitney Division (UTC) and the Town of Southington (Town) as well as over 300 other potentially responsible parties (PRPs). In November 1995, the United States, the State, and the majority of the PRPs entered into an Alternative Dispute Resolution Agreement regarding the Site which provided for an allocation process pursuant to which neutrals would assist the PRPs in allocating liability for the Site or assign shares of responsibility to various parties based on their connection with the Site. On September 3, 1996, the United States and the ADR Parties entered into an Allocation Settlement Agreement for the Site, subject to negotiation of a Consent Decree, which set forth shares for each ADR Party for costs associated with the ROD, the United States' past costs, the United States' future oversight costs associated with the ROD, and past costs incurred by some of the private parties. Pursuant to the Allocation Settlement Agreement, the United States agreed to reimburse parties for the orphan share at the Site, including the shares attributable to insolvent or defunct parties and the share attributable to the presence of municipal solid waste. The Town and UTC agreed to perform the remedial action set forth in the ROD and have formed a performing party group (the "Performing Parties Group") (together these two parties are also referred to as the "Performing Settling Defendants" in the Consent Decree) to effect such performance.

On December 3, 1997, the Performing Parties Group submitted a formal application for preauthorization as required by Section 300.700(d) of the NCP and 40 C.F.R. Section 307.22. A Consent Decree between EPA, the Town, UTC and certain other parties is being executed simultaneously with this Decision Document (hereinafter referred to as the Preauthorization Decision Document or PDD).

III. FINDINGS

Preauthorization (i.e., EPA's prior approval to submit a claim against the Superfund for reasonable and necessary response costs incurred as a result of carrying out the NCP) represents the Agency's commitment to reimburse a claimant from the Superfund, subject to any maximum amount of money set forth in this PDD, if the response action is conducted in accordance with the preauthorization and costs are reasonable and necessary. Preauthorization is a discretionary action by the Agency taken on the basis of certain determinations.

EPA has determined, based on its evaluation of relevant documents and the Performing Parties Group's Application for Preauthorization (Application) pursuant to 40 C.F.R. Section 300.700(d) that:

- (A) A release or potential release of hazardous substances warranting a response under Section 300.435 of the NCP exists at the Site;

- (B) The Performing Parties Group has agreed to implement the cost-effective remedy selected by the EPA to address the threat posed by the release at the Site;
- (C) The Performing Parties Group has demonstrated engineering expertise and a knowledge of the NCP and attendant guidance;
- (D) The activities proposed by the Performing Parties Group, when supplemented by the terms and conditions contained herein, are consistent with the NCP; and
- (E) The Performing Parties Group has demonstrated efforts to obtain the cooperation of the State of Connecticut.

EPA has determined, consistent with 40 C.F.R. Section 307.23, that the Application submitted by the Performing Parties Group demonstrates a knowledge of relevant NCP provisions, 40 C.F.R. Part 307, and EPA guidance sufficient for the conduct of a Remedial Action at the Site.

The Performing Parties Group is generally obligated to comply with all provisions and representations in the Application for Preauthorization, and to notify EPA of any changed circumstances which alter those provisions. If circumstances change between the time the Application is submitted, and the time of remedy implementation, it is in EPA's discretion to determine which Application provisions are still valid and which provisions no longer apply. The Consent Decree, including the terms and conditions of the PDD, the ROD, and the Statement of Work (SOW) shall govern the conduct of response activities at the Site. In the event of any ambiguity or inconsistency between the Application for Preauthorization (Application) and this PDD, with regard to claims against the Fund, the PDD and the Consent Decree shall govern.

IV. PREAUTHORIZATION DECISION

I preauthorize the Performing Parties Group to submit a claim(s) against the Superfund for sixty-three and nine one hundredths percent (63.09%) of reasonable and necessary eligible costs for design and construction of the remedy incurred pursuant to the ROD and Consent Decree (Exhibits 1 and 2), not to exceed eight million eight hundred thousand one hundred sixty-five dollars (\$8,800,165). This preauthorization is subject to compliance with the Consent Decree and the provisions of this PDD.

V. AUDIT PROCEDURES

The Performing Parties Group shall develop and implement audit procedures which will ensure their ability to obtain and implement all agreements to perform

preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. Section 307.32(e). Those requirements shall include but not necessarily be limited to the following procedures.

- A. The Performing Parties Group will develop and implement procedures which provide adequate public notice of solicitations for offers or bids on contracts that the Performing Parties Group will enter into for preauthorized response actions. Solicitations must include evaluation methods and criteria for contractor selection. The Performing Parties Group shall notify EPA of the qualifications of all contractors and principal subcontractors hired to perform preauthorized response actions pursuant to the Consent Decree, Section VI (Performance of the Work). EPA shall have the right to disapprove the selection of any contractor or subcontractor selected by the Performing Parties Group consistent with the Consent Decree. EPA shall provide written notice to the Performing Parties Group of the reasons for any such disapproval.
- B. The Performing Parties Group will develop and implement procedures for procurement transactions which provide maximum open and free competition; do not unduly restrict or eliminate competition; and provide for the award of contracts to the lowest, responsive, responsible bidder, 40 C.F.R. Section 307.21(e). The Performing Parties Group and their contractors shall use free and open competition for all supplies, services and construction with respect to the preauthorized response actions to be performed at the Site. There are a number of ways that the Performing Parties Group can meet these requirements including but not limited to the following:
 1. For example, if the Performing Parties Group awards a fixed price contract to a prime contractor, the Performing Parties Group has satisfied the requirement of open and free competition with regard to any subcontracts awarded within the scope of the prime contract.
 2. The Performing Parties Group is not required to comply with the Federal procurement requirements found at 40 CFR Part 33 or EPA's Guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988), in meeting these requirements. However, EPA does require that the Performing Parties Group use these documents for guidance in developing procurement procedures for small purchases, formal advertising, competitive negotiations and noncompetitive negotiations as each may be appropriate to remedying the release or threat of release at the Site.

3. With reference to small purchase procedures, EPA defines small purchase procedures as those relatively simple, informal procurement methods for securing services, supplies and other property from an adequate number of qualified sources in instances in which the services, supplies and other property being purchased constitute a discrete procurement transaction and do not cost more than a certain amount in the aggregate (Example: \$25,000). The Performing Parties Group can meet the requirements of maximum free and open competition with respect to small purchases by developing procedures which follow 40 CFR Part 33 or EPA's Guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988). However, the Performing Parties Group shall in no event divide procurement transactions into smaller parts to avoid the dollar limitation.

- C. The Performing Parties Group may use a list or lists of prequalified persons, firms, or products to acquire goods and services. The Performing Parties Group shall make each pre-qualification using evaluation methods and criteria which are consistent with the selection and evaluation criteria developed pursuant to Section V.A. above. Such list(s) must be current and include enough qualified sources to ensure maximum open and free competition. The Performing Parties Group shall not preclude potential offerors not on the prequalified list from qualifying during the solicitation period.
- D. The Performing Parties Group shall develop and implement procedures to settle and satisfactorily resolve all contractual and administrative matters arising out of agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. Section 307.32(e).

The following actions shall be conducted in a manner to assure that the preauthorized response actions are performed in accordance with all terms, conditions and specifications of contracts as required by EPA: (1) invitations for bids or requests for proposals; (2) contractor selection; (3) subcontractor approval; (4) change orders and contractor claims (procedures should minimize these actions); (5) resolution of protests, claims, and other procurement related disputes; (6) subcontract administration.

- E. The Performing Parties Group shall develop and implement a change order management policy and procedure generally in accordance with EPA's guidance on State Procurement Under Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988).

- F. The Performing Parties Group shall develop and implement a financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current, and complete accounting of all financial transactions relating to reimbursement for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations.
- G. As required in the Remedial Action Work Plan outlined in the Statement of Work, the Performing Parties Group shall develop and submit to EPA a Project Delivery Strategy to address the management approach for implementing the remedial action, including but not limited to procurement methods and contracting strategy and a Construction Management Plan addressing how the construction activities are to be implemented and coordinated with EPA. This Plan shall include an identification of key project management personnel, complete with roles, responsibilities and lines of authority (financial and decisional), and an organizational chart.
- H. Modification of Remedial Design elements or performance requirements contained in the Consent Decree or Statement of Work or the final Remedial Design shall be consistent with the Consent Decree. Such modifications shall modify this PDD.

VI. CLAIMS PROCEDURES

- A. Pursuant to section 111(a)(2) of CERCLA, EPA may reimburse necessary response costs incurred as a result of carrying out the NCP that satisfy the requirements of 40 C.F.R. Section 307.21, subject to the following limitations:
 - 1. Costs may be reimbursed only if incurred after the date of this preauthorization; and
 - 2. Costs incurred for long-term operation and maintenance are not eligible for reimbursement from the Superfund.
 - 3. The Statement of Work requires that the Performing Settling Defendants develop and submit an Operation and Maintenance Plan to EPA. Activities included within this plan and costs associated with such activities are ineligible for reimbursement from the Fund.

B. In submitting claims to the Superfund, the Performing Parties Group shall:

1. Document that response activities were preauthorized by EPA;
2. Substantiate all claimed costs through an adequate financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current and complete accounting of all financial transactions relating to reimbursement for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations; and
3. Document that all claimed costs were eligible for reimbursement, consistent with applicable requirements of 40 C.F.R. Part 307.

C. Claims may be submitted against the Fund by the Performing Parties Group only while the Performing Parties Group are in compliance with the terms of the Consent Decree and no more frequently than upon

1. Payment of acquisition and relocation costs pursuant to the Memorandum of Understanding dated February 14, 1997 and approval of the Remedial Action Work Plan;
2. Completion of excavation and consolidation of SSDA1;
3. Placement of the geomembrane layer on the cap;
4. Performance of final cap construction inspection;
5. Performance of three years of monitoring as required for the supplemental groundwater investigation, as calculated from the date of the final cap construction inspection, or such lesser time if the conclusion of groundwater monitoring is less than three years from the last submission.

VII. OTHER CONSIDERATIONS

A. This PDD is intended to benefit only the Town, UTC and EPA. It extends no benefit to nor creates any right in any third party.

B. If any material statement or representation made in the Application for Preauthorization is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn following written notice to the Town and UTC. Disputes

arising out of EPA's determination to withdraw its preauthorization shall be governed by Section XVII (Claims Against the Superfund) of the Consent Decree. Criminal and other penalties may apply as specified in 40 C.F.R. Section 307.15.

C. The Fund's obligation in the event of failure of the remedial action shall be governed by 40 C.F.R. Section 307.42. EPA may require the Performing Parties Group to submit any additional information needed to determine whether the actions taken were in conformance with the Consent Decree and the Statement of Work, and were reasonable and necessary.

D. This preauthorization shall be effective as of the date it is signed. Claims may be submitted prior to entry of the Consent Decree by the Court, but shall not be paid until after entry.

 3-5-98
Steven D. Luftig DATE
Director, Office of
Emergency & Remedial
Response

EXHIBITS

1. EPA Record of Decision for the Old Southington Landfill Superfund Site
2. Old Southington Landfill Site RD/RA Consent Decree